

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	)	
Endler, et al.	)	
	)	
Serial No.: 10/821,142	)	
	)	Examiner: James M. Hannett
Filed: April 7, 2004	)	
	)	Art Unit: 2622
For: DIGITAL CAMERA WITH A	)	
SPHERICAL DISPLAY	)	
<i>(amended title)</i>		

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RESPONSE TO THIRD NOTIFICATION OF  
NON-COMPLIANT APPEAL BRIEF**

Sir:

In response to the Notification of February 14, 2008, please note the following remarks:

**Remarks/Arguments** begin on page 2 of this paper.

### **REMARKS/ARGUMENTS**

This is filed in response to the Notice of Non-Compliant Brief, mailed February 14, 2008.

This is the third Notice of Non-Compliant Brief that has issued in this matter. A first Notice of Non-Compliant Brief was issued on October 29, 2007, and a second Notice of Non-Compliant Brief was issued on December 14, 2007. The objection raised in the second Notice was new and had not been raised in the first Notice. Similarly, the objection raised in the third Notice also was new and had not been raised in either of the prior two notices. All three notices have been issued by different Examiners.

Applicants have previously responded to the first two notices. While Applicants respectfully disagreed with the objections in each of those notices, Applicants went ahead and amended its Appeal Brief on both occasions in the hope of advancing the prosecution of this case. Now, Applicants are addressing the third Notice of Non-Complaint brief.

In this third Notice, Applicants' Second Amended Appeal Brief was alleged to be defective on the grounds that it does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number, etc., citing 37 CFR 41.37(c)(1)(v).

On March 6, 2008, a phone conference was held between the undersigned, counsel for Applicants, and Examiner Lorenda Hood. The undersigned called the Examiner in order to obtain clarification as to the nature of the objection in the third Notice. The Examiner stated that her objection pertained to page 2 of the Second Amended Appeal Brief, at the section with the heading "(5) Summary of Claimed Subject Matter." After further discussion on this point, however, the Examiner stated that she would reconsider her objection and would check with others in her office.

On March 10, 2008, a second phone conference was held between the undersigned and Examiner Hood. In the course of this call, the Examiner indicated that she would withdraw her objections to the appeal brief and that she would be sending out a letter to this effect on the following day.

As of this date, however, no such letter has been mailed according to PAIR. Accordingly this response is filed with the request that the Examiner follow-up and withdraw her objection as she indicated that she would do.

**APPELANTS' BRIEF COMPLIES WITH RULE 41.37(c)(1)(v)**

Alternatively, Appellants contend that the Second Amended Appeal Brief does in fact comply with Rule 41.37(c)(1)(v). Applicants have carefully reviewed the summary section of the Second Amended Appeal Brief and, with all due respect, find the present text to be fully compliant with the requirements of 37 C.F.R. §41.37. Particular reference was made by the Examiner with respect to the requirements of 35 C.F.R. §41.37(c)(1)(v). The portion of the section relied upon by the Examiner requires:

A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawings, if any, by reference characters.

This is exactly what the present summary section in the Second Amended Appeal Brief provides. The subject matter of the independent claims is presented, in prose format, including references to the specification by page and line number as well as to the figures.

There are no other specific requirements of the regulations that were cited in the February 14, 2008 as grounds for objection. Applicants therefore respectfully submit that the summary of claimed subject matter section of the Second Amended Appeal Brief is fully compliant with the requirements of the Code of Federal Regulations and is in suitable condition to support consideration by the Board.

CONCLUSION

For all the reasons advanced above, Applicants submit that the Second Amended Appeal Brief fully complies with the applicable regulations and that the February 14, 2008 Notification should be withdrawn.

Respectfully submitted,

/Gary D. Mann/  
Gary D. Mann  
Reg. No. 34,867

Dated: March 17, 2008

***FITCH EVEN TABIN & FLANNERY***  
120 S. LaSalle St., Suite 1600  
Chicago, IL 60603

(818) 715-7025  
(818) 715-7033 (fax)

***Certificate of Transmission***

I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office via the Office electronic filing system on the date shown below.

*Date of Transmission:* March 17, 2008

/Gary D. Mann/  
*Signature*

Gary D. Mann, Reg. No. 34,867  
*Typed Name of Person Signing Certificate*